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10/007,869	11/08/2001	Stewart Paton Granger	J6666(C)	6511

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PATENT DEPARTMENT
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EXAMINER	
JIANG, SHAOJIA A	
ART UNIT	PAPER NUMBER
1617	

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/007,869	Applicant(s) GRANGER ET AL.	
	Examiner Shaojia A. Jiang	Art Unit 1617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *28 January 2003* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-16* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-16* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) *10* .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on January 28, 2003 has been entered in Paper No. 8.

This Office Action is a response to Applicant's request for continued examination (RCE) filed January 28, 2003 in Paper No. 8, and amendment and response to the Final Office Action (mailed September 10, 2002), filed January 28, 2003 in Paper No. 9 wherein claims 1-15 have been amended and claim 16 is newly submitted. Currently, claims 1-16 are pending in this application.

Claims 1-16 are examined on the merits herein.

Applicant's claim for domestic priority to provisional application Serial No. 60/258,458 under 35 U.S.C. 119(e) is acknowledged.

Applicant's amendment amending claims 1-15, filed January 28, 2003 in Paper No. 9 with respect to the rejection made under 35 U.S.C. 112 first paragraph for lack of scope of enablement for "retinoid boosters" in claims 1-15 of record stated in the Office Action dated September 10, 2002 has been fully considered and is found persuasive to

remove the rejection since the instant claims have been amended to recite particular retinoid boosters herein. Therefore, the said rejection is withdrawn.

Applicant's amendment amending claims 1-15, filed January 28, 2003 in Paper No. 9 with respect to the rejection made under 35 U.S.C. 112 second paragraph for indefinite expression "retinoid boosters" in claims 1-15 of record stated in the Office Action dated September 10, 2002 has been fully considered and is found persuasive to remove the rejection since the instant claims have been amended to specify the retinoid boosters herein. Therefore, the said rejection as to the indefinite expression "retinoid boosters" in claims 1-15 is withdrawn.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 5, 10, and 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The expression "mimicking the effect on skin of retinoic acid" in claims 5, 10, and 15 renders these claims indefinite. This expression is not seen to be defined in the specification. Hence, one of ordinary skill in the art could not interpret as to what the effects of retinoic acid on the skin were and how they were mimicked.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1, 4-6, 9-11, and 14-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Granger et al. (5,536,740, PTO-892) in view of Liu et al. (5,976,555, of record) and Surares et al. (5,941,116, of record).

Granger et al. discloses a skin conditioning composition comprising a compound selected from retinol or retinyl ester in an amount from about 0.001% to about 10%, preferably in an amount from about 0.01% to about 1%, in combination with dimethyl imidazolidinone (also known as 1,3-dimethyl-2-imidazolidinone, see particularly the structural formula at col.3 lines 1-10) in an amount from about 0.001% to about 10%; and a method of conditioning skin comprising applying topically to the skin the composition therein. See also abstract, col.1 lines 59-67, col.2 lines 60-67, col.4 lines 54-55 and claims 1-5. Granger et al. also discloses that dimethyl imidazolidinone in combination with either retinol or retinyl ester results in a synergistic enhancement or synergistic effects in treating skin conditions such as dry skin, photodamaged skin, appearance of wrinkles, age spots and aged skin (see col.2 lines 1-19). Granger et al. further discloses that the skin care composition therein is stored in a suitable container to form a skin care product (see col.4 lines 55-56 and lines 60-62).

Granger et al. does not expressly disclose the first compartment for storing retinol or retinyl ester kept out of contact with oxygen, and the second compartment for storing dimethyl imidazolidinone, and the first and second compartments being joined together; and avoiding chemical degradation of retinol or retinyl ester in the first composition that would be caused by contact with dimethyl imidazolidinone in the second composition.

Liu et al. teaches that retinoids including of retinol, retinyl ester and retinal in skin care compositions are unstable, i.e., quickly losing their activity and either oxidize or isomerize to non-efficacious chemical forms. See col.2 lines 40-53. As a result, several stable compositions for skin care are supplied in two bottles or two portions (separating retinoids from other ingredients) and are mixed together just prior to use (see particularly col. 2 lines 54-61).

Surares et al. discloses that the first and second compositions are stored in respective separate containers, being joined together (see abstract and Fig.1-2). One of separate compositions may comprise retinol, retinol esters, or retinoic acid (see col.3 Table I, col.4 lines 59-64, and col.8 Table III).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to employ two compartments for separately storing retinol or retinyl ester in a first composition and dimethyl imidazolidinone in the second composition, and also to keep retinol or retinyl ester out of contact with oxygen.

One having ordinary skill in the art at the time the invention was made would have been motivated to employ two compartments for separately storing retinol or

retinyl ester in a first composition and dimethyl imidazolidinone in the second composition, and also to keep retinol or retinyl ester out of contact with oxygen since retinoids including of retinol, retinyl ester and retinal in skin care compositions are known to be unstable because they quickly lose their activity by, for example, either being oxidized or isomerizing to non-efficacious chemical forms according to Liu et al. Moreover, several known stable compositions for skin care are known to be supplied in two bottles or two portions (separating retinoids from other ingredients) to keep retinoids from chemical reactions with other ingredients (the first and second compositions are known to be stored in respectively separate compartments or containers, being joined together) and are mixed together just prior to use and, based the teachings of Liu and Surares. Therefore, one of ordinary skill in the art would have found it obvious to employ two compartments for separately storing retinol or retinyl ester in a first composition and dimethyl imidazolidinone in the second composition to keep retinol or retinyl ester from reacting with dimethyl imidazolidinone in order to preserve the stability of retinol or retinyl ester in the compositions, and also to keep retinol or retinyl ester out of contact with oxygen to avoid being oxidized by oxygen in the air in the air or some other locations. Thus, the teachings of Liu and Surares et al. have clearly provided the motivation to employ the separate compartments herein.

Claims 3, 8, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Granger et al. (5,536,740, PTO-892) in view of Liu et al. (5,976,555, of record) and

Surares et al. (5,941,116, of record) and Remington's Pharmaceutical Sciences (1990, of record).

The same disclosure of Granger et al. has been discussed above (see supra at page 4 of the instant Office Action).

The same teachings of Liu et al. and Surares et al. have been discussed above (see supra at page 5 of the instant Office Action).

Above three cited references do not expressly disclose the first compartment made out of aluminum.

Remington's Pharmaceutical Sciences (1990) teaches that aluminum containers are widely used in pharmaceutical products for preserving the stability of many pharmaceuticals (see the bottom of the right column at page 1511 to the 1st paragraph of the left column at page 1512).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to employ an aluminum container as the first compartment for storing retinol or retinyl ester.

One having ordinary skill in the art at the time the invention was made would have been motivated to employ an aluminum container as the first compartment for storing retinol or retinyl ester since Remington's Pharmaceutical Sciences (1990) teaches that aluminum containers are known to be widely used in pharmaceutical products for preserving the stability of many pharmaceuticals because one of ordinary skill in the art would clearly acknowledge that an aluminum container is stable, i.e., not reacting with many pharmaceuticals including retinol or retinyl ester in a normal storing

condition and therefore is widely used as pharmaceutical containers (and/or food containers). Moreover, selecting a material for a container to store a pharmaceutical product from all known materials is considered well in the competence level of an ordinary skilled artisan in pharmaceutical science and/or cosmetic science, involving merely routine skill in the art.

Claims 1-2, 4-7, 9-12, and 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Granger et al. (5,716,627, PTO-892) in view of Liu et al. (5,976,555, of record) and Surares et al. (5,941,116, of record).

Granger et al. discloses skin conditioning compositions comprising a) retinol or retinyl ester in an amount from about 0.001% to about 10%, preferably in an amount from about 0.01% to about 1% (see particularly abstract, col.2 lines 31-40 and col.3 lines 34-39), b) an azole, most preferably climbazole (see particularly col.2 line 62, col.4 lines 19-27, col.12 Example 3 and col.14 Example 4) in an amount from about 0.001% to about 50%, preferably in an amount from about 0.001% to about 10%, and c) a fatty acid amide such as linoleoyl-DEA (also known as linoleamide DEA) in an amount from about 0.001% to about 50% (see particularly col.2 lines 36-38, col.12 Example 3 and col.14 Example 4); and a method of conditioning skin comprising applying topically to the skin the composition therein. See also claims 1-2 therein. Granger et al. also discloses that an azole such as climbazole, and a fatty acid such as linoleoyl-DEA substantially increase the ability of either retinol or retinyl ester in skin benefit, resulting in a synergistic interaction between retinol or retinyl ester and fatty acid amides and

azoles in treating skin conditions such as dry skin, photodamaged skin, appearance of wrinkles, age spots and aged skin (see col.2 lines 41-58). Granger et al. further discloses that the skin care composition therein is stored in a suitable container to form a skin care product (see col.6 lines 24-25 and 33-35).

Granger et al. does not expressly disclose the first compartment for storing retinol or retinyl ester kept out of contact with oxygen, and the second compartment for storing climbazole or linoleamide DEA, and the first and second compartments being joined together; and avoiding chemical degradation of retinol or retinyl ester in the first composition that would be caused by contact with dimethyl imidazolidinone in the second composition.

Liu et al. teaches that retinoids including of retinol, retinyl ester and retinal in skin care compositions are unstable, i.e., quickly losing their activity and either oxidize or isomerize to non-efficacious chemical forms. See col.2 lines 40-53. As a result, several stable compositions for skin care are supplied in two bottles or two portions (separating retinoids from other ingredients) and are mixed together just prior to use (see particularly col. 2 lines 54-61).

Surares et al. discloses that the first and second compositions are stored in respective separate containers, being joined together (see abstract and Fig.1-2). The second composition may comprise retinol, retinol esters, or retinoic acid (see col.3 Table I, col.4 lines 59-64, and col.8 Table III).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to employ two compartments for separately storing retinol or retinyl

ester in a first composition and climbazole or linoleamide DEA in the second composition, and also to keep retinol or retinyl ester out of contact with oxygen.

One having ordinary skill in the art at the time the invention was made would have been motivated to employ two compartments for separately storing retinol or retinyl ester in a first composition and climbazole or linoleamide DEA in the second composition, and also to keep retinol or retinyl ester out of contact with oxygen since retinoids including of retinol, retinyl ester and retinal in skin care compositions are known to be unstable because they quickly lose their activity by either being oxidized or isomerizing to non-efficacious chemical forms according to Liu et al. Moreover, several known stable compositions for skin care are supplied in two bottles or two portions (separating retinoids from other ingredients) and are mixed together just prior to use. Thus the first and second compositions stored in respectively separate compartments or containers to stablize retinoids from other ingredients, being joined together, are known in the art based the teachings of Liu and Surares. Therefore, one of ordinary skill in the art would have found it obvious to employ two compartments for separately storing retinol or retinyl ester in a first composition and climbazole and linoleamide DEA in the second composition to keep retinoids from reacting with climbazole and/or linoleamide DEA in order preserve the stability of retinoid in the compositions, and also to keep retinol or retinyl ester out of contact with oxygen to avoid being oxidized by oxygen in the air or some other locations. Thus, the teachings of Liu and Surares et al. have clearly provided the motivation to employ the separate compartments herein.

Claims 3, 8, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Granger et al. (5,716,627, PTO-892) in view of Liu et al. (5,976,555, of record) and Surares et al. (5,941,116, of record) and Remington's Pharmaceutical Sciences (1990, of record).

The same disclosure of Granger et al. has been discussed above (see supra at page 8-9 of the instant Office Action).

The same teachings of Liu et al. and Surares et al. have been discussed above (see supra at page 9 of the instant Office Action).

Above three cited references do not expressly disclose the first compartment made out of aluminum.

Remington's Pharmaceutical Sciences (1990) teaches that aluminum containers are widely used in pharmaceutical products for preserving the stability of many pharmaceuticals (see the bottom of the right column at page 1511 to the 1st paragraph of the left column at page 1512).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to employ an aluminum container as the first compartment for storing retinol or retinyl ester.

One having ordinary skill in the art at the time the invention was made would have been motivated to employ an aluminum container as the first compartment for storing retinol or retinyl ester since Remington's Pharmaceutical Sciences (1990) teaches that aluminum containers are known to be widely used in pharmaceutical products for preserving the stability of many pharmaceuticals because one of ordinary

skill in the art would clearly acknowledge that an aluminum container is stable, i.e., not reacting with many pharmaceuticals including retinol or retinyl ester in a normal storing condition and therefore is widely used as pharmaceutical containers (and/or food containers). Moreover, selecting a material for a container to store a pharmaceutical product from all known materials is considered well in the competence level of an ordinary skilled artisan in pharmaceutical science and/or cosmetic science, involving merely routine skill in the art.

Thus the claimed invention as a whole is clearly prima facie obvious over the combined teachings of the prior art as discussed above.

Applicant's remarks filed on filed January 28, 2003 in Paper No. 9 with respect to the rejection of claims 1-15 made under 35 U.S.C. 103(a) as being unpatentable over Surares et al. (5,941,116) in view of Liu et al. (5,976,555) and Remington's Pharmaceutical Sciences (1990) of record in the previous Office Action dated September 10, 2002 have been fully considered but are moot in view of the new ground(s) of rejection set forth above.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1, 3-6, 8-11, and 13-15 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-5 of U.S. Patent No. 5,536,740 (Granger et al.) in view of Liu et al. (5,976,555, of record) and Surares et al. (5,941,116, of record) and Remington's Pharmaceutical Sciences (1990, of record).

Although the conflicting claims are not identical, they are not patentably distinct from each other because the patent is drawn to a skin conditioning composition comprising a compound selected from retinol or retinyl ester in an amount from about 0.001% to about 10%, in combination with dimethyl imidazolidinone in an amount from about 0.001% to about 10%; and methods of conditioning skin comprising applying topically to the skin the composition therein.

The claims of the instant application is drawn to stable skin care products containing a first composition comprising about 0.001% to about 10% of a retinoid selected from the group consisting of retinyl esters, retinol, retinal and mixtures thereof; a second composition comprising about 0.0001% to about 50% of at least one retinoid booster selected from the group consisting of the particular retinoid boosters such as dimethyl imidazolidinone; a first compartment for storing the first composition; and a second compartment for storing the second composition; the first and second

compartments being joined together, and methods of conditioning skin employing the compositions herein.

The patent does not expressly disclose the first compartment made of aluminum for storing retinol or retinyl ester kept out of contact with oxygen, and the second compartment for storing dimethyl imidazolidinone, and the first and second compartments being joined together; and avoiding chemical degradation of retinol or retinyl ester in the first composition that would be caused by contact with dimethyl imidazolidinone in the second composition.

The same teachings of Liu et al. and Surares et al. and Remington's Pharmaceutical Sciences (1990) have been discussed above (see supra at page 7 of the instant Office Action).

One having ordinary skill in the art at the time the invention was made would have been motivated to employ two compartments for separately storing retinol or retinyl ester in a first composition and dimethyl imidazolidinone in the second composition, and also to keep retinol or retinyl ester out of contact with oxygen since retinoids including of retinol, retinyl ester and retinal in skin care compositions are known to be unstable because they quickly lose their activity by either being oxidized or isomerizing to non-efficacious chemical forms according to Liu et al. Moreover, several known stable compositions for skin care are supplied in two bottles or two portions (separating retinoids from other ingredients) and are mixed together just prior to use based the teachings of Liu and Surares. Therefore, one of ordinary skill in the art would have found it obvious to employ two compartments for separately storing retinol or

retinyl ester in a first composition and dimethyl imidazolidinone in the second composition to keep retinoids from reacting with dimethyl imidazolidinone in order preserve the stability of retinoid compositions, and also to keep retinol or retinyl ester out of contact with oxygen to avoid being oxidized by oxygen. Thus, the teachings of Liu and Surares et al. have clearly provided the motivation to employ the separate compartments herein.

Additionally, one having ordinary skill in the art would have found it obvious to employ an aluminum container as the first compartment for storing retinol or retinyl ester since Remington's Pharmaceutical Sciences (1990) teaches that aluminum containers are known to be widely used in pharmaceutical products for preserving the stability of many pharmaceuticals. Moreover, selecting a material for a container to store a pharmaceutical product from all known materials is considered well in the competence level of an ordinary skilled artisan in pharmaceutical science and/or cosmetic science, involving merely routine skill in the art.

Thus, the instant claims 1, 3-6, 8-11, and 13-15 are seen to be obvious over the claims 1-5 of U.S. Patent No. 5,536,740 in view of Liu et al. (5,976,555, of record) and Surares et al. (5,941,116, of record) and Remington's Pharmaceutical Sciences (1990, of record).

Claims 1-16 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-2 of U.S. Patent No. 5,716,627 (Granger et al.) in view of Liu et al. (5,976,555, of record) and Surares et al. (5,941,116, of record) and Remington's Pharmaceutical Sciences (1990, of record).

Although the conflicting claims are not identical, they are not patentably distinct from each other because the patent is drawn to skin conditioning compositions comprising a) a compound selected from the group consisting of retinol in an amount from about 0.001% to about 10%, b) an azole selected from the group consisting of climbazole and other particular azoles in an amount from about 0.001% to about 50%, c) a fatty acid amide selected from the group consisting of linoleamide DEA and other particular fatty acid amides in an amount from about 0.001% to about 50%; and a method of conditioning skin comprising applying topically to the skin the composition therein.

The claim of the instant application is drawn to stable skin care products containing a first composition comprising about 0.001% to about 10% of a retinoid selected from the group consisting of retinyl esters, retinol, retinal and mixtures thereof'; a second composition comprising about 0.0001% to about 50% of at least one retinoid booster selected from the group consisting of the particular retinoid boosters such as dimethyl imidazolidinone; a first compartment for storing the first composition; and a second compartment for storing the second composition; the first and second compartments being joined together, and methods of conditioning skin employing the compositions herein.

The patent does not expressly disclose the first compartment made of aluminum for storing retinol or retinyl ester kept out of contact with oxygen, and the second compartment for storing dimethyl imidazolidinone, and the first and second compartments being joined together; and avoiding chemical degradation of retinol or

retinyl ester in the first composition that would be caused by contact with dimethyl imidazolidinone in the second composition.

The same teachings of Liu et al. and Surares et al. and Remington's Pharmaceutical Sciences (1990) have been discussed above (see supra at page 7 of the instant Office Action).

As discussed in the above obviousness-type double-patenting rejection (see *supra* at page 14-15 of the instant Office Action), as the same reason as above, the teachings of Liu and Surares et al. have clearly provided the motivation to employ the separate compartments herein and Remington's Pharmaceutical Sciences (1990) also provided the motivation for employing an aluminum container for storing retinol.

Thus, the instant claims 1-16 are seen to be obvious over the claims 1-2 of U.S. Patent No. 5,716,627 in view of Liu et al. (5,976,555, of record) and Surares et al. (5,941,116, of record) and Remington's Pharmaceutical Sciences (1990, of record).

Claims 1-16 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-10 of copending Application No. 10/004,508.

Although the conflicting claims are not identical, they are not patentably distinct from each other because the copending application is drawn to stable skin care products containing a first composition comprising about 0.001% to about 10% of a retinoid selected from the group consisting of retinyl esters, retinol, retinal and mixtures thereof'; a second composition comprising about 0.0001% to about 50% of at least one

retinoid booster; a first compartment made out of aluminum for storing the first composition; and a second compartment for storing the second composition the first and second compartments being joined together, and methods of conditioning skin employing the compositions.

The claim of the instant application is drawn to stable skin care products containing a first composition comprising about 0.001% to about 10% of a retinoid selected from the group consisting of retinyl esters, retinol, retinal and mixtures thereof'; a second composition comprising about 0.0001% to about 50% of at least one retinoid booster selected from the group consisting of the particular retinoid boosters herein; a first compartment for storing the first composition; and a second compartment for storing the second composition; the first and second compartments being joined together, and methods of conditioning skin employing the compositions herein.

Thus the instant claims 1-16 are seen to anticipate claims 1-10 of copending Application No. 10/004,508.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1-15 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-5 of copending Application No. 10/008,067 in view of Liu et al. (5,976,555, of record) and Surares et al. (5,941,116, of record) and Remington's Pharmaceutical Sciences (1990, of record).

Although the conflicting claims are not identical, they are not patentably distinct from each other because the copending application is drawn to a stable skin care composition containing a first composition comprising about 0.001% to about 10% of a retinoid; and about 0.0001% to about 50% of at least one retinoid booster; and a cosmetically acceptable vehicle, wherein the stable skin care composition is contained in a package so that the composition is out of contact with oxygen and the package made out of aluminum, and methods of conditioning skin employing the composition.

The claim of the instant application is drawn to stable skin care products containing a first composition comprising about 0.001% to about 10% of a retinoid selected from the group consisting of retinyl esters, retinol, retinal and mixtures thereof'; a second composition comprising about 0.0001% to about 50% of at least one retinoid booster selected from the group consisting of the particular retinoid boosters herein; a first compartment for storing the first composition; and a second compartment for storing the second composition; the first and second compartments being joined together, and methods of conditioning skin employing the compositions herein. Thus, the instant compositions comprise about 0.001% to about 10% of a particular retinoid and about 0.0001% to about 50% of particular retinoid boosters herein.

The copending Application No. 10/00,067 does not expressly disclose the first compartment made of aluminum for storing retinol or retinyl ester, and the second compartment for storing at least one retinoid booster, and the first and second compartments being joined together; and avoiding chemical degradation of retinol or

retinyl ester in the first composition that would be caused by contact with dimethyl imidazolidinone in the second composition.

As discussed in the above obviousness-type double-patenting rejection (see above for example at page 14-15 of the instant Office Action), as the same reason as above, the teachings of Liu and Surares et al. have clearly provided the motivation to employ the separate compartments herein.

Thus, the instant claims 1-15 are seen to be obvious over the claims 1-5 of copending Application No. 10/00,067 in view of Liu et al. (5,976,555, of record) and Surares et al. (5,941,116, of record).

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

In view of the rejections to the pending claims set forth above, no claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Jiang, whose telephone number is (703) 305-1008. The examiner can normally be reached on Monday-Friday from 9:00 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreenivasan Padmanabhan, Ph.D., can be reached on (703) 305-1877. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556. Any inquiry of a general nature or relating to the status of

this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-1235.

S. Anna Jiang, Ph.D.
Patent Examiner, AU 1617
March 26, 2003